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No. 79-1950

IN THE

Supreme Court of the United States

October Term, 1979

SHIRLEY BERK, individually and as Executrix of the Estate of OSCAR BERK, *et al.*,

Petitioner,

vs.

COUNTY OF LOS ANGELES, as Trustee for the People of the State of California,

Respondent.

SHIRLEY BERK, individually and as Executrix of the Estate of OSCAR BERK, *et al.*,

Petitioner,

vs.

CITY OF TORRANCE, as Trustee for the People of the State of California,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of California

RESPONDENT CITY OF TORRANCE BRIEF IN OPPOSITION.

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CITY OF TORRANCE, as Trustee for the People of the State of California,

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RESPONDENT'S BRIEF IN OPPOSITION.

Respondent City of Torrance, as trustee for the People of the State of California, respectfully requests that this Court deny the petition for a writ of certiorari, which seeks review of the decision of the California Supreme Court in this case.

Opinions Below.

The opinion of the California Supreme Court is reported as *County of Los Angeles v. Berk* [consolidated with *City of Torrance v. Berk*] (1980) 26 Cal.3d 201; 161 Cal.Rptr. 742; 605 P.2d 381. The opinion of the California Court of Appeal is reported at App., 151 Cal.Rptr. 879.

Questions Presented.[1, 2]

1. Can a person who purchased property after a state Supreme Court issued a decision restating and clarifying the law of implied dedication of public easements in that state and decided that law had been in effect for many years prior to the decision, claim that the decision deprived her of her property without due process of law in violation of the Fifth and Fourteenth Amendments to the Constitution when it is later determined that the property she purchased was encumbered with just such an easement, and that she was not a bona fide purchaser?

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[1]Petitioner set forth four questions. The first question presented by petitioner concerns a one year period in 1969 when the properties were in *custodia legis* in bankruptcy court. Petitioner is arguing that this interrupted the five year period of dedication. However, this question is *not* applicable to the respondent City since the Courts below found that the property located in respondent City had become dedicated to the public in 1963 prior to the bankruptcy petition (26 Cal.3d at p. 211, p. 7; Pet.App.A, p. 8; Conclusion of Law No. II, A-14). The respondent City, however, urges the Court to reject this issue for reasons set forth in the County of Los Angeles brief.

[2]Petitioner also presents this question for the Court's consideration.

> "Can a litigant afford due process of law when a state court, without hearing evidence, indulges in presumptions about the effect of human behavior—which have no basis in fact—which are applied so conclusively that once the presumption has been indulged, the adverse litigant cannot rebut the presumption?"

Respondent does not understand the question and does not see any relationship of the question to this case and therefore declines to present it as a question to this Court. As will be argued, none of the questions as drafted by petitioner have any relationship to the case.

2. Can a person claim that she was deprived of her property without just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution as a result of an action filed against her by a local public entity as trustee on behalf of the public to quiet title to a public easement based on the ancient doctrine of implied dedication, an action any member of the public could have filed, when such action was based on a decision of the State Supreme Court in effect when she purchased the property and which the Court has ruled had been in effect for many years?

Statement of the Case.

A. Background of Case.

On February 19, 1970, the California Supreme Court issued its decisions in *Gion v. City of Santa Cruz* and *Dietz v. King* (consolidated at 2 Cal.3d 29, 84 Cal.Rptr. 162; 465 P.2d 50) hereinafter referred to as *Gion-Dietz*, in which a trial court judgment was affirmed in the first case quieting title to a public recreational easement in beach and shoreline property acquired by implied dedication, and in the second case, reversing a trial court holding to the opposite.

Although there were a number of previous California Supreme and Appellate Court cases which over many years had held that property could be impliedly dedicated to the public for recreational purposes, such cases were rare and generally unnoticed.[3] However, with the urbanization of California the amount of coastline accessible to the public was rapidly disappearing and what was left was becoming overcrowded.[4]

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[3]Comment, *Public or Private Ownership of Beaches: An Alternative To Implied Dedication*, 18 UCLA Law Review 795, 799 (1971).

[4]*Id.* at p. 796.

At the time the State Supreme Court announced its decision in *Gion-Dietz*, public concern over preservation and protection of coastal resources was intense. As a result, the decision received heavy and widespread publicity in California in both the public and legal media.

Shortly thereafter, the petitioner, a second year law student,[5] and her husband Oscar Berk, a real estate developer with over 20 years experience, became interested in buying two adjacent parcels of beach property divided by the boundary line between the City of Torrance and the City of Redondo Beach.[6]

At the trial Mr. Berk testified that when he first saw the property, he thought it belonged to the County of Los Angeles. He was not alone, for at the trial there was ample testimony that the general public also thought it was public property and there was evidence that the general public had held this opinion for over 50 years. The public had good reason to so believe.

The properties were sandwiched in between County property which extended a third of a mile to the south (the beach extended 5/6's of a mile to the south) and for 5/6's of a mile to the north. This beach area accommodated 5,400,000 visitors annually.

According to testimony at the trial, during the four months between the first time Mr. Berk visited the property and the time escrow closed, over a thousand people crossed the property daily to get to and from the beach or to the County areas north and south of the property.

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[5]The petitioner was admitted to the State Bar of California on December 12, 1972.

[6]Appendix "A" is a map of the properties as they existed at the time of purchase.

The use of the property by the public was so intense that highly visible paths were worn into the property and persons using the banks of the bluff for a shortcut to the beach rather than the stairs had worn deep paths in the ice plant which had been planted by the County on the front slopes to prevent erosion.

The public also used the property for parking, picnicking, sports, (there were permanent volleyball standards installed on the beach portions) and, because of its spectacular view, for viewing, painting and photographs. (F.F. No. XI, App. C. 8.)[7]

Every day the County raked the beach part, emptied the trash cans and cleaned the upper portion. The County had a visible sprinkler system on the property to water the ice plant and it hauled in earth each year to fill in the erosion of the banks. The County also provided lifeguard services on the beach. (F.F. No. XIV, App. C. 10.)

All this was patently obvious to the petitioner and her husband at the time they were considering purchasing the property and any investigation would have revealed to the petitioner and her husband that the public had historically used the properties for recreational use. (F.F. No. XIII, App. C. 9.)

Yet there was no investigation by petitioner and her husband, even with the *Gion-Dietz* cases having been freshly

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[7]Petitioner understates the public use of the property by stating that between 1958 and 1963 there was evidence that there was *some* use made of the property by members of the public. Numerous witnesses testified at the trial there was intensive use of the properties by the public over many years. The evidence was uncontroverted and the trial court found that such use was intensive throughout the period commencing in the late 1940's. (Findings of Fact Nos. XI and XIII, App. C. 8,9.) Petitioner failed to include the Findings of Fact and Conclusions of Law as required. They are attached as Appendix "C" and will be referred to herein as F.F. or C.L.

decided. In fact, when Mr. Berk called a longtime friend and local resident for advice, Mr. Berk was warned that it was "trouble property" and that he should call the president of the local homeowners association and discuss the purchase with him. But, Mr. Berk replied: "Oh, to hell with it, I think I am going to buy it anyways!" Had Mr. Berk contacted the homeowner president, he would have been told that the homeowners were aware of the *Gion-Dietz* case and considered that the properties were dedicated to public recreational use.

Consequently, the trial court found that the petitioner and her husband had constructive notice of the public easements and were not bona fide purchasers. (C.L. No. IV, App. C. 14.)

While the purchase was still in escrow, the Homeowners Association requested the respondent City to file an action to quiet title on the beach properties in Torrance. Shortly before escrow closed, the City Council authorized the City Attorney to file such actions. Ironically, this property was not included in the authorization because the Deputy City Attorney preparing the recommendations to the City Council, like many other members of the public, thought that this property already belonged to the County.

However, when petitioner and her husband sought a building permit from the respondent City, the error was discovered and the City on behalf of the public, filed the instant action to quiet title in the public.[8]

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[8]Both the City and County also sought to quiet title in themselves in the event it was decided by the courts that only the State had standing to file an action on behalf of the people. There was no clear precedent in California as to the standing of cities and counties to file quiet title actions as trustees for the people. It was contested at the trial level and decided against petitioner in the trial court and though not raised on appeal, was resolved by the State Supreme Court. (26 Cal.3d at p. 224; Pet. App. A26); Yokely, *Municipal Corporations* (1957) §428, p. 569 this rule prevails in most jurisdictions. Also Rhyne, *Municipal Law* (1957) §16-4, pp. 371-374.

Respondent differs with petitioner's version of the history of the property as a private club. The evidence at trial was that the clubhouse erected in 1928 was for the use of the homeowners in the surrounding tract. However, the Great Depression which shortly followed depressed sales of homesites in the tract forcing the developers to open the clubhouse to use of the public and it ceased to be a private club very shortly after it was opened. Consequently, many members of the public who used the property while the clubhouse was located on it, thought it was owned by the County and leased to private operators.

Petitioner states that subsequent attempts to develop the properties were defeated "because the neighbors did not want a high rise blocking their views." There was no evidence of this presented at the trial and in fact the major opposition was from homeowners whose views would not be affected by any high rise. Much of this opposition to development came from people who either believed that the property should be a public park, or that a high rise was inappropriate in a low rise area.

Petitioner also omits the fact that when Mr. Keillor, a former owner, was frustrated by City officials in Torrance in attempting to develop the property as high rise, he engineered a deal with County officials in which he was able to induce those officials to exchange adjacent County beach for beach already dedicated to the public located on the Torrance property. The finding by County officials that the County property involved in the exchange was "not needed for public use" despite heavy public use, aroused such suspicion that a Grand Jury investigation ensued—but no indictments returned.[9]

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[9]A map of how the property existed prior to the exchange is attached as Exhibit B.

Mr. Keillor was similarly successful in inducing Redondo Beach officials to permit him to build anything he wanted on the Redondo Beach property. Mr. Berk also enjoyed similar success in inducing Redondo Beach officials to allow him to build anything he wanted, even when, as Mr. Berk testified, Redondo Beach officials knew that the County of Los Angeles was contending that the property was dedicated to the public for recreational uses.[10]

B. The Decision of the California Supreme Court.

The California Supreme Court affirmed the judgment of the trial court, determining that both the Torrance and Redondo Beach parcels had been dedicated to the public for recreational uses.

The petitioner raised the same questions (among others) before the State Court as she raises here, but all four questions were decided against her on independent state grounds.

First, the court determined that there was no retroactive application of the law as set forth in the *Gion-Dietz* decision, so as to deprive her of her property unconstitutionally, holding that *Gion-Dietz* was a restatement and clarification of well-established former law and are application of that law to a unique set of patterns of factual circumstances.

Second, it disposed of petitioner's argument that there must be a specific finding that the public's use of the subject property was accompanied by a belief on its part it had a right to such use.[11] The court held that since 1895, the standard of proof was whether based upon all the circumstances and the actions of the public, it could be concluded

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[10]The County also filed an action as trustee on behalf of the public to quiet title to the property located in Redondo Beach shortly after the Torrance action was filed.

[11]Even so, there was ample evidence presented to the trial court that the public did believe that the property was public property.

that the public believed it had a right to use the property as it did and that such belief was reasonable.

Summary of Arguments.

Respondent argues that this court should not grant relief to petitioner for the following reasons:

1. Petitioner purchased the property already encumbered with a public recreational easement, and it was determined by the State Court that she was not a bona fide purchaser. The decision of the State Supreme Court that she argues made a sudden change in the law, occurred prior to her making the purchase. Therefore, she cannot claim that she was denied due process or that her property was taken without just compensation because she had ample opportunity to investigate the state of the law and of the title before she made the purchase.

2. There was no sudden "break" in the decisional law as claimed by petitioner. The decision of the California Supreme Court was consistent not only with its own prior decisions, but was entirely consistent with cases decided by this Court in 1832. The decision of the State Supreme Court was an interpretation of its property law and this court has consistently deferred to state courts in such matters.

3. The petitioner has lost any interest in the property through foreclosure and therefore the case is moot.

REASONS WHY THE PETITION SHOULD BE DENIED.

I.

THERE IS NO SUBSTANTIAL FEDERAL QUESTION FOR THE COURT TO DECIDE—PETITIONER CANNOT COMPLAIN OF LACK OF DUE PROCESS OR TAKING OF PROPERTY WITHOUT JUST COMPENSATION AS RESULT OF COURT DECISION SINCE SHE ACQUIRED PROPERTY AFTER COURT DECISION.

Since the questions presented by petitioner clearly fail to relate to the holdings of the State Supreme Court and the Findings of Fact and Conclusions of Law of the trial court, the Federal questions raised by petitioner are only specters. It is suggested by respondent that this court follow its policy set forth in *New Orleans Waterworks Co. v. Louisiana* (1902) 155 U.S. 336, 344; where it dismissed a writ of error stating:

> "It has long been the holding of this court that in order to warrant the exercise of jurisdiction over the judgments of state courts there must be something more than a mere claim that a Federal question exists."

There are no fair grounds for asserting that the action of the California Supreme Court violated petitioner's Federal constitutional rights.

For a person who purchased property already encumbered with a public easement, how can petitioner argue that her property was taken without just compensation? She *never* had the property.

The court decision she complains was state action that deprived her of her property and deprived her of due process happened *before* she purchased her property.

Should her negligence in failing to investigate the status of her title before she acquired the property be "amplified" to a status of an unconstitutional taking of her property—

to an unconstitutional denial of due process? Certainly not!! She had ample due process. She had every opportunity to investigate the status of her title.

A. Petitioner Was Afforded Ample Due Process.

When this matter was tried, petitioner had a much lesser burden of proof than did the respondents. The respondents had to prove:

1. The public used the property for at least five years as if it were public property. *Gion-Dietz*, 2 Cal.3d at p. 39.
2. That the public use was sufficiently intensive so that the owner had actual knowledge of such use. *Id.* at p. 43.
3. That the public use was by various groups of persons and not an intermittent use. *Id.* at p. 39.
4. That the public use was without substantial interference or objection during the five year period. *Id.*

Once the respondents had established these proofs to the satisfaction of the court, petitioner had an equal opportunity to present evidence that this did not occur.[12] The respondent also could defeat the respondent's case by establishing that the public had a license to use the property. *Gion-Dietz*, 2 Cal.3d at p. 29.

Contrary to the assertions of petitioner that all presumptions of law were against her,[13] in California the presumption

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[12]Twenty-three witnesses testified as to continuous public use from 1919 without any interference or license from the owners or any interruption. Respondent also filed over 300 declarations testifying to such public use in support of motion for preliminary injunction. Petitioners, on the other hand, produced only one witness who testified there was an interruption of use in 1967-68 but his testimony was destroyed by contrary photographs and testimony.

[13]She cites no law on this matter.

favors the owner of legal title to the property, and it is presumed that the owner has the benefit of the full beneficial title. California Evidence Code §662. Under that section of the Evidence Code, the presumption must be overcome, not by the preponderance of the evidence as in ordinary civil cases, but by "*clear and convincing proof.*"[14]

Therefore, all petitioner had to show was that the proof of the respondents was not clear and convincing that a public recreational easement had not been dedicated to the public *before* she purchased the property. Because she was unable to do so does not mean she was denied due process. She either knew or should have known what she would have to prove when she bought the property.[15]

If *Gion-Dietz* had been decided while petitioner owned the properties, she might have some standing to raise the issue. However, it was the rule of law when she purchased the property. She argues, however, that if there had not been a change in the law, the owners before her would have been unable to protect themselves against having their property dedicated.[16]

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[14]The reason for the rarity of implied dedication cases is that such cases are very difficult to prove, contrary to petitioner's argument. Of four reported cases in California since *Gion-Dietz*, two cases affirmed denials of public easements for lack of evidence. *County of Orange v. Chandler-Sherman Corp.* (1976) 54 Cal.App.3d 561, 126 Cal.Rptr. 765; *Richmond Ramblers Motorcycle Club v. Western Title Guaranty Co.* (1975) 47 Cal.App.3d 747, 121 Cal.Rptr. 308. Where the property is not located in a community where it has gained a reputation as public property or is used frequently by some organization which has members of long standing, it is difficult to establish continuous public use of the extent required for a period of at least 5 years. Most public users are anonymous transients and have no knowledge of the history of use.

[15]Petitioner did *not* testify at the trial so no one knows what she knew but since she was a second year student when she purchased the property, it can be assumed she was familiar with property law.

[16]There was no evidence presented by petitioner that any of the owners were even aware of the rules of dedication or prescription or even concerned about it

This begs the question. If she is going to argue that she has been denied due process and that her property has been taken without just compensation, respondent submits that she must show that it was she who was directly affected by the change in law, that it was *her* property that was taken—not that of other persons before her.

B. There Was No "Taking".

As discussed earlier petitioner did not have her property "taken." She never owned what was taken. That is why *Hughes v. Washington* (1967) 389 U.S. 290; *Sotomura v. County of Hawaii* (D. Haw. 1975) 402 F.Supp. 95 [ruling on motion to dismiss] (D. Haw. 1978) 460 F.Supp. 473; and *Robinson v. Ariyoshi* (D. Haw. 1977) 441 F.Supp. 559, cited by petitioner are not applicable. In each case, the change in decisional law changed the boundary line of the property so that the owner lost property automatically *to the State*.

The decisions in these cases were clear "breaks" and changes in decisional law—and in the Hawaiian cases, the State Supreme Court did so without permitting a trial.

That is not so here. The California Supreme Court had ample grounds to state it was not a change in decisional law. There has been a trial in which all parties had ample opportunity to present their cases.

The cases are distinguishable on another ground. The decision by a state court in the cases cited by petitioner resulted in an automatic transformation of private property to state property. The most that can be argued here is that there was a change in the evidentiary test and that can *only* be argued if petitioners argument that there was a "change in the law" is correct. However, in this case there was no

automatic transformation of any property into State property.[17]

II.

THE HOLDING IN GION-DIETZ AND ITS PREDECESSOR CASES IS CONSISTENT WITH THE HOLDINGS OF THIS COURT SINCE 1832.

In *Barclay et al. v. Howell's Lessee* (1832) 31 U.S. (6 Pet) 498, 512; this Court held that a lot along the waterfront had been dedicated. Originally, the lot had been shown on a map laying out the town of Pittsburgh as extending as part of Water Street to the river but Water Street itself never did extend over the lot in question. 31 U.S. at p. 501. This occurred in 1784 and nothing was done on the property by the proprietor until 1814 when the proprietor sold the property. When the new owner sought to develop the property several years later, an action for ejectment was filed. In affirming the decisions of the state court quieting title in the public this Court stated:

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[17]Other cases cited by petitioner do not support her position that this court has taken jurisdiction where state courts have purportedly made a sudden change in decisional law affecting property rights. *Muhlker v. New York & Harlem R.R.* (1905) 197 U.S. 544 cited by her was distinguished by this Court in *Tidal Oil v. Flanagan* (1923) 263 U.S. 444, 452-453; as a case involving impairment of contract in which New York courts twice held in favor of petitioner but reversed their decision after the legislature enacted a statute subsequent to a contract. Petitioner's citation of *Desist v. United States* (1969) 394 U.S. 244 is not appropriate to this case. First the Court recognized that it had made a "clear break with the past" upon which many criminal convictions were based. But the State Supreme Court in the case here did not so find. Further, the *Katz* decision discussed in *Desist* would have applied to already obtained convictions. Petitioner, however, acquired her property *after* the decision of which she complained. *Chicago B. & Q. R. Co. v. Chicago* (1897) 166 U.S. 226 is distinguishable in that it did not involve a change in the law. This Court affirmed the judgment of the Illinois courts that $1.00 was just compensation for the taking of railroad property for opening a street across the tracks.

> "A title which has remained dormant for so great a number of years, and while the property was used for public purposes, and necessarily within the knowledge of the agents of the proprietors, is now asserted under doubtful circumstances of right. In some cases a dedication of property to public use, as, for instance, a street or public road, where the public has enjoyed the unmolested use of it for six or seven years, has been deemed sufficient evidence of dedication."

The Court went on to hold that based on the evidence:

> "This lapse of time, connected with the public use and the determination expressed by the agent at the time the town was laid out to dispose of the whole of the manor, affords strong grounds to presume that no reservation of any part of the manor was intended to be made: and that the slip of land in controversy was not reserved. These were facts proper for the consideration of the jury in determining the fact of dedication. They were calculated to have a strong influence to rebut the presumptions relied on by the plaintiff in the court below." *Id.*

Although the decision indicates that the owner's original intention to dedicate (though not at all clear)[18] was a fact to consider, it was *not* the only fact. This Court further held that on the basis of a *period of unmolested use by the public*, there is a presumption of dedication.

> "If it were necessary, an unmolested possession for thirty years would authorize the presumption of a grant. Indeed, under peculiar circumstances, a grant has been presumed from a possession less than the number of years required to bar the action of ejectment by the statute of limitations."

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[18]The proprietor later sold the property so it could be argued that it was not his intent to dedicate.

This is clearly the doctrine of the implied in law dedication, the same law followed by the California Supreme Court.

In another decision the same year, based on similar acts, *Cincinnati v. The Lessee of White* (1832) 31 U.S. (6 Pet) 431; this Court further explained the law of dedication.

In this case this Court held that there was an express dedication as distinguished from implied dedication stating that a dedication to public use can also be *inferred* from the circumstance that the land has been enjoyed as a common for many years. (31 U.S. at p. 439.)

Here the Court applied the law of dedication to a "common" and it applied the same rules to open lands as to roads, holding: (31 U.S. at pp. 438-439)

> "If this is the doctrine of the law applicable to highways, it must apply with equal force, and in all its parts, to all dedications of land to public uses; and it was so applied by this court to the reservation of a public spring of water for public use, in the case of M'Connell v. The Trustees of the Town of Lexington, 12 Wheat. 582. The court said, the reasonableness of reserving a public spring for public use, the concurrent opinion of all the settlers that it was so reserved, the universal admission of all that it was never understood that the spring lot was drawn by any person, and the early appropriation of it to public purposes, were decisive against the claim."

This is precisely the holding of the State Supreme Court in *Gion-Dietz*. The State Supreme Court stated therein that in the case of *O'Banion v. Borba* (1948) 32 Cal.2d 145; 195 P.2d 10, it removed the confusion in the law caused by different presumptions applying to roads than to unenclosed and unimproved land by applying the same law as to both, removing the presumption that as to unenclosed

and unimproved land, the use is by license. (2 Cal.3d at p. 29). The Court, as did this Court, made the question of dedication one of fact for the trier of fact to decide.

This is consistent with the holding of this Court in the *Cincinnati* case where it was further held: (31 U.S. at p. 438)

> "All public dedications must be considered with reference to the use for which they are made . . . but the principle so far as respects the right of the owner to disturb the land must rest on the same ground in both cases, and applies equally to the dedication of the common as to the streets."[19]

The petitioner would have this Court hold to the opposite and treat properties unequally.

Further, this Court adopted the same test in *Cincinnati* that the California Supreme Court adopted for determining whether or not the owner effectively interfered with or prevented public use of his property so as to refute the implication that he intended to dedicate his property. At 31 U.S. p. 440 this court adopted the English Common Law test:

> "In the case of Rex v. Lloyd, 1 Camp. 262, Lord Ellenborough says, if the owner of the soil throws open a passage, and neither marks by any visible distinction that he means to preserve all his rights over it, nor excludes persons from passing through it by positive

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[19]Indeed in an implied dedication case in 1951, long before *Gion-Dietz*, a California court held the same: (*People v. Savig* (1951) 101 Cal.App.2d 890, 897 [226 P.2d 702].)

> "There is a general presumption that use by other than the owner is adverse and not permissive. While this presumption is not as strong when the land is open and uncultivated and remote, as when it is enclosed, cultivated and developed [citing *Hihn*, inter alia,] the presumption exists in either case."

The shoreline property involved here is like a "common," not at all "remote," but an urban park used heavily by members of the community.

prohibition, he shall be presumed to have dedicated it to the public.''

The petitioner complains that the California Supreme Court ''without evidence'' made certain presumptions that deprived her of her property without due process and without just compensation. She claims the *Gion-Dietz* decision was ''draconion,'' ''revolutionary,'' ''radical,'' putting the final nail in the coffin of private property rights.

Yet this Court ruled precisely the same way in 1832 on the very similar evidence.

Clearly the petition lacks merit and the law has been so explicitly foreclosed by prior decisions as to leave no room for genuine controversy. It does not present a substantial Federal question.

III.

GION-DIETZ WAS NOT A CHANGE IN THE LAW—BUT EVEN SO, IT DOES NOT PRESENT A FEDERAL QUESTION.

The petitioner's argument that there was a change in the decisional law of California in *Gion-Dietz* is just as meritless as the rest of her arguments.[20]

A. The Decision of the State Supreme Court Was ''Black Letter'' Law.

Respondent does not intend to develop the case here that the decision in *Gion-Dietz* was not a revolutionary change or a retroactive decision. The California Supreme Court has twice decided that the case was not a change in the decisional law and explained its reasoning therefore in *Gion-Dietz* at

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[20]Questions 2, 3 and 4 of the petition were presented in the identical form by petitioner's counsel in *Daugherty v. City of Long Beach*, (1977) 75 Cal.App.3d 372; 142 Cal.Rptr. 953 (cert. den. Oct. 2, 1978, 439 U.S. 823). When this Court denied certiorari in that case on those questions, it was assumed that those questions were not justiciable and that all could rely on the law in *Gion-Dietz* as being certain.

pp. 38-43 and in this case at 26 Cal.3d pp. 212-216 (Pet. App. A9-15).

That the *Gion-Dietz* decision was not a change in law is reflected in 2 Witkin, *Summary of California Law* (7th ed. 1960), Real Property §27, p. 882.[21]

Ten years prior to the *Gion-Dietz* decision, Witkin stated that: "A common law dedication is a 'grant and gift' of land or an interest in land to the public for a public use, e.g., for a highway or *park*." (Emphasis added.) *Id.*

Witkin further stated that the dedication could be effected on ". . . the theory of *implied* dedication . . ." (*Id.* at p. 883).

Witkin cites the cases of *Morse v. Miller* (1954) 128 Cal.App.2d 237; 275 P.2d 545, and *Union Transportation Co. v. Sacramento County* (1954) 43 Cal.2d 235; 267 P.2d 10 as well as *Phillips v. Laguna Beach Co.* (1922) 190 Cal.180; 211 P. 225 where common law dedications occurred.

The only distinction made by Witkin between implied-in-fact and implied-in-law cases (which petitioner argues are significantly distinct) is the length of time required for the dedication to occur. (*Id.* at p. 884.) He states that an implied-in-fact dedication requires "a *short time*" while an implied-in-law dedication is shown by "long continued adverse use."

Although petitioner argues that *F.A. Hihn Co. v. City of Santa Cruz* (1915) 170 Cal. 435; 150 P. 62 holds that a different rule applies to unenclosed lands, Witkin does not cite the case at all and correctly so, since the holding cited by petitioner is dictum, as is noted by the State Supreme

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[21]The *Summary of California Law* is the "bible" of California law, a set every lawyer in California keeps at his elbow, often quoted as the source of law in appellate decisions in California.

Court in its decision in this case. (26 Cal.3d at p. 215; Pet. App. A14).

Thus, in 1960 the ruling in *Gion-Dietz* was hornbook law in California. Unfortunately, a few student law review writers and some lawyers failed to consult their Witkin.[22]

Other text writers agreed with Witkin. In 2 Yokely, *Municipal Corporations* (1957) § 428, pp. 568-569, the author cited all California cases including *F.A. Hihn Co.* in support of the following summary of the law of dedication.

> "There are many decisions which indicate that an offer to dedicate land may be inferred from the owner's long acquiescence in public use of the property under circumstances which negative the idea that the use was under a license."[23]

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[22]Contrary to petitioner's argument that there was a near unanimous consensus that the *Gion-Dietz* decision was new law, there were sharply divided opinions among the writers and the members of the bar as to whether it was new law. Other writers differed with petitioner. Comment, *Public or Private Ownership of Beaches: an Alternative to Implied Dedication, supra* p. 809; Gallagher, Jure, and Agnew, *Implied Dedication The Imaginary Waves of Gion-Dietz* (1973) 5 SW. U. L. Rev. 48, 50; Briscoe and Stevens. *Gion after Seven Years: Revolution or Evolution* (1977) L.A. Bar J. 207, 219-220. As noted previously, *supra* f.n. 2, the application of the implied dedication doctrine in California was rare before *Gion-Dietz*, the last case being in 1954. It is rarely applied elsewhere also. Note, *Public Ownership of Land Through Dedication* (1962) 75 Harv. L.Rev 1406. As a result few lawyers and fewer members of the public were aware of such law and did not consider its applications. As noted previously, the *Gion-Dietz* decision came at a time when Californians were intensely aware of the problems of protecting the coastline and *Gion-Dietz* offered a possible solution and hence was a bombshell and a surprise. Unfortunately its critics completely exaggerated its importance not realizing that the problems of proof severely limited its application. Torrance was an exception because of a long standing reputation of the public use of the beach and shoreline in the community. See f.n. 14, *supra*.

[23]Rhyne, *Municipal Law* (1957) § 16-2, p. 365, "the intent to dedicate can be inferred" by silence of the owner.

It is thus clear that the decision in *Gion-Dietz* was merely a restatement of black letter law.[24]

B. The Issues, Though Cast in Constitutional Dress, Are Really Issues of State Property Law and Not Federal Issues.

The decision below was a quiet title action to determine the incidents of ownership in property. This Court has consistently deferred to the state courts on determinations of questions relating to property ownership and the rights of owners in relation to the state and to private parties, *State Land Board v. Corvallis Sand and Gravel Co.* (1977) 429 U.S. 363, 378.

Although cases involving the body of law concerning adverse possession, prescriptive rights and dedications, rarely are decided by this Court, when asked to make such decisions in similar cases, this Court has followed its time honored rule that state law governs the rights of property law.[25]

In *Donohue v. Vosper* (1917) 243 U.S. 59, 65; the Court declined to review a decision involving adverse possession because such a decision was

> "... essentially a local question, involving an appreciation of the evidence as to the conduct of the parties, and we cannot review it."

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[24]Contrary to petitioner's assertion that there is great public interest in this case, it received no mention at all in other than the routine announcement of the decision in the legal press and in the local Torrance papers. With the enactment by initiative of the California Coastal Zone Conservation Act at the general election of 1972 providing for a comprehensive coastal management plan, interest in *Gion-Dietz* dissipated to an academic exercise.

[25]Contrary to petitioner's assertion that this court's decision in *Prune Yard Shopping Center v. Robins* (1980); 100 S.Ct. 2035; and *Agins v. City of Tiburon* (1980); 100 S.Ct. 2138; signal a greater concern over property rights, these decisions of this Court more likely support respondent's position that this Court is concerned about the preservation of Federalism, deferring to the state courts, decisions on the applicability of the law in their respective states.

In *Corkran Oil Company v. Arnaudet* (1905) 199 U.S. 182, 193; this Court dismissed a writ for review on the basis no Federal question existed where Louisiana Supreme Court affirmed a prescriptive title under Louisiana constitutional amendment adopted a year after petitioner had acquired his property by Act of Congress.

This Court should have no reason for changing its historic policy of disposing of such property issues as matters of state law.

The Court below has only interpreted its property law as applicable to petitioner—and correctly so.

IV.

PETITIONER NO LONGER HAS AN INTEREST IN THE PROPERTY AND THE CASE IS MOOT.

The petitioner no longer has any interest in the property which is the subject of the petition. Much of the original interest in the property was held by certain holders of security interests who were defendants below. After the action was filed, the petitioner stopped making payments to the holders of the security interests. During and after the trial the holders foreclosed on the interest of the petitioner which was judicially affirmed in separate action.

Judgment was also entered in the trial court against the holders of the security interests in this action. However, after foreclosing on the petitioner, the holders had fee title which they conveyed to the County of Los Angeles.

The California Supreme Court, however, permitted the petitioner standing on the basis that petitioner retained an interest in obtaining monetary redress on equitable grounds under the allegations of her cross-complaint based on inverse condemnation.

The Court, however, was in error because no cross-complaint for monetary relief existed. As the Court noted in its

decision in this case, no cause of action for inverse condemnation was alleged against respondent City. (26 Cal.3d at p. 206.)[26]

Although petitioner originally alleged causes of action for slander of title and unjust enrichment, during the trial, both actions were dismissed against the City by petitioner without prejudice.[27]

Thus, petitioner has no interest against respondent City of Torrance. She cannot recover title to the property because she lost her title to a third party. She cannot sue for damages under any theory because she failed to perfect her right to damages prior to the decision of the trial court or within the periods prescribed in the statute of limitations for each cause of action.[28]

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[26]Both the State Supreme Court and the Court of Appeal were advised of this error in respondent's briefs. It was based on this error that the Court of Appeal awarded damages against the City, and it was on this lack of any cross-complaint for damages the City petitioned the State Supreme Court for review of the decision of the Court of Appeal (as well as complete misinterpretation of *Klopping v. City of Whittier* (1972), 8 Cal.3d 39; 104 Cal.Rptr. 1; 500 P.2d 1345 and other grounds). Relief for inverse condemnation would not be available in any event since there was no governmental action "taking" the property. The action of the respondents was merely to quiet title to a right already acquired by members of the public.

[27]Reporter's Transcript, page 3375. Under California law, damages cannot be sought against a public entity until a claim has been filed with the entity. California Government Code Section 945.4 and City of Torrance Municipal Code Section 21.1.1. Any such claim must be filed within one year after the cause of action arises and no such claim was filed by petitioner. In addition, there are fixed procedures for adjudicating claims for recovery of taxes, which petitioner never followed. As a result, the City demurred to the causes of action for damages. The actions were never refiled and are now barred by the statutes of limitations as well as not having been refiled during the trial below so that they could be decided.

[28]Slander of title, 3 years, California Code of Civil Procedure §337, subsection (7); unjust enrichment (taxes), California Revenue and Tax Code §5141 (6 months after claim rejected; deemed rejected, 6 months after presentation, claim must be filed within 4 years after making payment for which refund claimed (Revenue & Tax Code §5097)); inverse condemnation, 3 years, Code of Civil Procedure §338, subsection (2) or in some cases, 5 years.

With due deference to the fact that petitioner has stubbornly pursued this case because she does not agree with the law of the case, and there is obviously a "controversy" between the parties as to what the law should be, there certainly is no justiciable controversy over which this Court should take jurisdiction when petitioner can realize no relief even if this Court were to rule in her favor.

This Court has refused to take jurisdiction in the past in a similar case when a petitioner claimed loss of property but no longer had any beneficial interest.

In *Knox v. Exchange Bank* (1870) 79 U.S. 379; this Court declined to take jurisdiction where the petitioner had lost all interest in the property through a bankruptcy. This Court held that "plaintiffs in error had no interest in the matter in suit, and were not proper parties to bring a writ in error to the court." (79 U.S. at p. 381.)

Although the State Supreme Court ruled (in error) that petitioner still had standing because she might recover monetary damages, nevertheless, this Court has never considered itself bound by a state court determination as to mootness. *Liner v. Jafco, Inc.* (1964) 375 U.S. 301, 304.

Conclusion.

As has been set forth herein and in the brief of respondent County, the questions raised by the petitioner have no substance, and the decisions of this Court previously have so completely covered the questions she attempts to raise as to leave no room for genuine controversy.

Further, petitioner has no interest in the property and cannot benefit from any decision of the court. Therefore, the respondent prays the petition be denied.

Respectfully submitted,

STANLEY E. REMELMEYER,
City Attorney, Torrance,
and
JACK ALLEN,
Attorneys for Respondent,
City of Torrance.

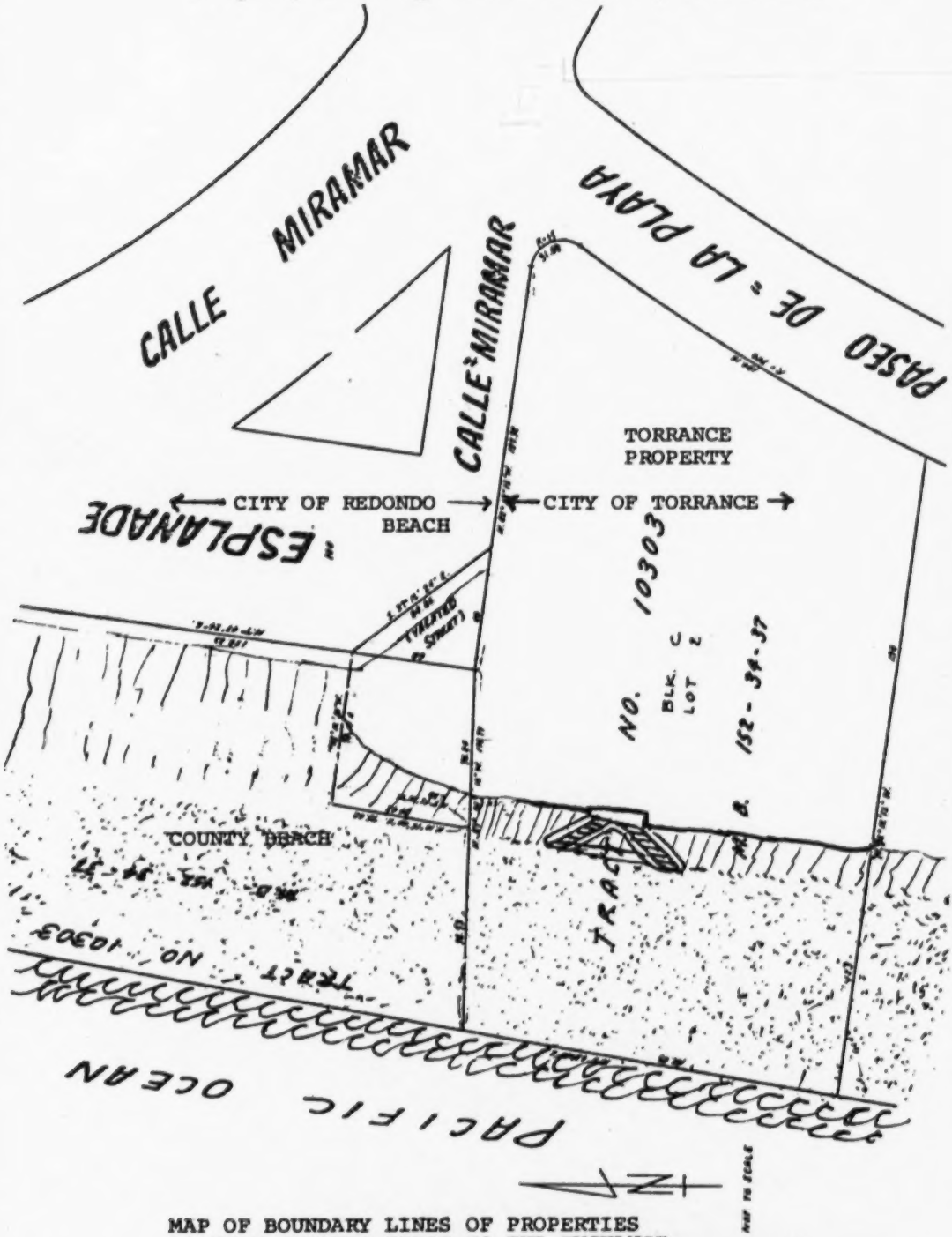
APPENDIX A.

Map of Boundary Lines of Properties at Time Complaints Were Filed.

MAP OF BOUNDARY LINES OF
PROPERTIES AT TIME OF FILING OF COMPLAINTS

APPENDIX B.

Map of Boundary Lines of Properties in 1965 Before Property Exchange Between County and Keillor.



MAP OF BOUNDARY LINES OF PROPERTIES AS THEY EXISTED PRIOR TO THE EXCHANGE OF PROPERTIES IN 1965 AND DURING THE TIME PERIOD THAT ALL OF LOT 2, BLOCK C, TRACT NO. 10303 WAS IMPLIEDLY DEDICATED FOR PUBLIC RECREATIONAL USE.

APPENDIX C.

Findings of Fact and Conclusions of Law.

Superior Court of the State of California, for the County of Los Angeles.

City of Torrance, etc., Plaintiffs and Cross-Defendants, v. Oscar Berk, et al., Defendants and Cross-Complainants. No. SW C 19574 (Transferred).

Filed: February 23, 1973.

This action to quiet title in that certain parcel of real property described in the First Amended Complaint of plaintiff City of Torrance, a municipal corporation, for itself and on behalf of the public, and as trustee in trust for the public and an action to quiet title to certain parcels of real property described in the Complaint of plaintiff County of Los Angeles, for itself and on behalf of the public, and as trustee in trust for the people of the State of California, and for a permanent injunction enjoining defendants' interference with plaintiff's rights in and to said parcels of real property, which actions were consolidated for trial by order of the Court, came on regularly for trial on May 8, 1972, and continued from time to time to September 21, 1972, before the Honorable Richard S. Schauer, Judge of the Superior Court, Department 62, sitting without a jury, on all issues.

Stanley E. Remelmeyer, City Attorney, by A. D. "Jack" Allen, Jr., Deputy City Attorney, appeared as attorneys for plaintiff City of Torrance. John D. Maharg, County Counsel, by Charles Vinson Tackett, Deputy County Counsel, and Max E. Truex, Deputy County Counsel, appeared as attorneys for plaintiff County of Los Angeles. Thomas M. Dankert appeared as attorneys for defendant Oscar Berk and Shirley Berk during the trial from May 8, 1972, and Stell and Levine by Joseph Stell appeared as attorneys for Oscar and Shirley Berk from May 19, 1972 and thereafter. Don-

nelly, Clark, Chase & Haakh by John A. Donnelly appeared as attorneys for defendant United California Bank. Davidson, Baker & Davidson by H. W. Davidson appeared as attorneys for Fidelity Federal Savings and Loan and Gateway Mortgage Corporation. Fulop, Rolston, Burns and McKittrick by Merton G. Rosen appeared as attorneys for defendant J. Halperin & Company and John Halperin.

The actions were dismissed as against Security Pacific National Bank (sued and served herein as Security National Bank), General Telephone Company of California (sued and served herein as General Telephone Company of California), and Southern California Edison Company (sued and served herein as Southern California Edison Company and, as to the Torrance action, sued and served herein as DOE II).

United California Bank, a party to the action of the City of Torrance as trustee under a deed of trust described in Proposed Finding Number VII, did not appear in the City of Torrance action. United California Bank filed a cross-complaint against the County which was dismissed without prejudice.

Oscar Berk and Shirley Berk filed a cross-complaint against the City of Torrance, Security-Pacific National Bank, United California Bank, General Telephone Company of California, Southern California Edison Company, J. Halperin-Co. (sic). The cross-complaint was severed as to all cross-defendants except the City and the cross-complaint as to such cross-defendants was not tried in the within actions.

Oscar and Shirley Berk also filed a cross-complaint against the County of Los Angeles. The cross-complaint was severed as to all cross-defendants except the County and the cross-complaint as to such cross-defendants was not

tried in the within action. A demurrer to the County to the cross-complaint was subtained without leave to amend on the First and Third Causes of action.

In the case of the action by the City, the case proceeded on the First Amended Complaint of the City, the Berks' Amended Answer to the First Amended Complaint, and their Amended Amendment to Amended Answer, the Berks' Cross-Complaint, the City's Answer to the Berk's Cross-Complaint, Answer of Fidelity Federal Savings & Loan Association and Gateway Mortgage Corp. to the First Amended Complaint, and the Answer of J. Halperin & Co. of California, Inc. and John Halperin to the First Amended Complaint.

The actions proceeded in the case of the County on the County's Complaint, the Berks' Amended Answer and Amended Amendment to Amended Answer, the Berks' Cross-Complaint, United California Bank's Answer and Cross-Complaint against the County; the County's Answer and Supplemental Answer to the Berks' Cross-Complaint.

Said actions having been heard, evidence both oral and documentary was introduced on behalf of the respective parties, and the matter having been submitted to the Court for decision, the Court being advised in the premises now makes findings of fact as follows:

FINDINGS OF FACT.

I.

That on March 12, 1971, plaintiff City filed its complaint herein to quiet title to the property therein described and for injunctive relief and summons was issued thereon. Subsequently, on April 8, 1971, plaintiff City filed its first amended complaint to quiet title and for injunctive relief to the property therein described.

II.

That plaintiff, City of Torrance, at all times relevant to this action has been and is a municipal corporation duly organized and existing under and by virtue of its charter and by laws of the State of California.

III.

That at all times relevant to this action, the real property legally described below has been and now is situated in the City of Torrance, County of Los Angeles, State of California, which real property is more particularly described as follows:

> Lot 2 in Block C of Tract 10303, in the City of Torrance, County of Los Angeles, State of California, as per map recorded in Book 152, pages 34 to 37 inclusive, of Maps, in the Office of the County Recorder of said County.

IV.

That the real property legally described in Finding of Fact Number III is that same property described in the plaintiff's First Amended Complaint.

V.

That at all times relevant to this action, the real property described in Finding of Fact Number III, was bordered on the west by the mean high tide line, as it existed prior to the widening of the beach in the winter of 1967-1968, on the north by the northerly limits of the City of Torrance and the southerly limits of the City of Redondo Beach, to the east by Paseo de la Playa and to the south by public property under the control of the County of Los Angeles.

VI.

That on or about September 7, 1965, the westerly portion of that real property described in Finding of Fact III beginning at the Southwesterly corner of said Lot 2, thence easterly along the southerly line of said lot a distance of 123.00 feet, thence northerly along a line which is parallel with the westerly line of Esplanade, 100 feet wide, as shown on said map, to the northerly boundary to northwesterly corner of said lot, thence southerly along the westerly line of said lot to the point of beginning was severed from said real property described in Finding of Fact No. 3 and conveyed to the County of Los Angeles. Said parcel shall hereinafter be referred to as Parcel S.

VII.

That the easterly portion of that real property described in Finding of Fact Number III is legally and more particularly described as follows:

> Lot 2 in Block C of Tract No. 10303, in the City of Torrance, in the County of Los Angeles, State of California, as per Map recorded in Book 152 pages 34 to 37 inclusive of Maps, in the Office of the County Recorder of said County.
>
> Excepting therefrom that portion of said lot described as follows:
>
> Beginning at the southwesterly corner of said Lot 2; thence easterly along the southerly line of said lot a distance of 123 feet; thence northerly along a line which is parallel with the westerly line of Esplanade, 100 feet wide, as shown on said map, to the northerly boundary to northwesterly corner of said lot; thence southerly along the westerly line of said lot to the point of beginning; hereinafter described as Parcel T.

VIII.

That the borders of that real property described in Finding of Fact Number VII as Parcel T are the same as the borders of the real property described in Finding of Fact Number V except that as the result of the severance of Parcel S, Parcel T is bordered on the west by the top of a bluff on which the entirety of Parcel T is located.

IX.

That defendants Oscar Berk and Shirley Berk are the fee owners of that portion of the real property described in Finding of Fact Number VII as Parcel T and that defendant Gateway Mortgage Corporation is trustee and defendant Fidelity Federal Loan Association is beneficiary under a deed of trust recorded August 12, 1970, as to Parcel T and, that defendant United California Bank is trustee and that defendant John Halperin is beneficiary under a deed of trust recorded September 29, 1970, as to Parcel T.

X.

That the parcel of real property described in Finding of Fact Number III is, and that portion thereof described in Finding of Fact VII, is also by itself a breach of shoreline property lying within a beach and shoreline recreational area.

XI.

That for a period of five (5) years commencing at a date subsequent to September 25, 1958, but prior to November 1, 1958, and ending on or by November 1, 1963, that various and diverse members of the general public made various and diverse beach and shoreline recreational uses of the entirety of that real property described in Finding of Fact Number III without interruption and that those uses included ingress, egress, viewing, strolling, walking of

dogs, fishing, bicycle riding, picnicking, sunbathing, games, photography, painting, parking, and various other recreational uses such as swimming and surfing incidental to and commonly associated with beach and shoreline recreational area; that prior to the five year period and since the late 1940's, the southern and western edges of Parcel T and the entirety of Parcel S were used for said beach and shoreline recreational uses except for parking and riding of bicycles; that said beach and shoreline recreational uses of all of said real property have continued to the date of the filing of this action without interruption, except as set forth in Finding of Fact No. XXVI; and that as to all periods of public use, said uses by said members of the general public were and the evidence of said uses was, open and apparent.

XII.

That the uses of that real property described in Finding of Fact Number III by said members of the general public were and are made as if said property was part of a public recreational area.

XIII.

That uses described in Finding of Fact Number XI by said members of the general public were made without seeking or receiving permission to do so from anyone whomsoever or at all and that said uses were made with the owner's full knowledge, and, were and are sufficiently intensive and visible as to place an owner or interested party on notice as to such uses so that slight inquiry would disclose the history, reputation and existence of such uses and that no effective effort was made by any owner or anyone else to interfere with or halt such use by said members of the general public at any time.

XIV.

That the County of Los Angeles, the public agency which has and does operate and maintain the beach and shoreline recreational area along Torrance Beach on which the real property described in Finding of Fact Number III is located, has continuously and without interruption for a period of more than ten (10) years preceding the commencement of this action provided lifeguarding and associated services, and cleaning and sanitation activities on the said real property.

XV.

That the beach to the west of the real property described in Finding of Fact Number III was widened by the Corps of Engineers of the United States Army from late 1967 through early 1968 and that during the period of beach widening various and diverse members of the general public continued without interruption to make public recreational use of said real property for beach and shoreline recreational purposes.

XVI.

Parcel T was placed into receivership in December of 1968 by the then owner of said parcel pursuant to a proceeding under Chaprer XI of the Federal Bankruptcy Act during which time the encumbrancers were restrained from foreclosing and it so remained for a period of approximately eleven months thereafter, during which time public recreational uses of the parcel continued without interruption.

XVII.

That plaintiff had no actual knowledge of the state or condition of its title to an easement for itself and on behalf of the public, in, on, and across the real property described

in Finding of Fact Number III for public recreational purposes at any time when any defendent acted to acquire any interest in said real property.

XVIII.

That there was no representation, misrepresentation, conduct or act of the plaintiff or of any officer, employee or agent of the plaintiff, to or toward any defendant or defendant's predecessor in interest upon which any defendant or defendant's predecessor in interest could have relied or did rely upon to his or its detriment in acquiring any interest in the real property described in Finding of Fact Number III or any portion thereof; that there was not any statement made to any defendant or defendant's predecessor in interest, by the plaintiff or any officer, employee or agent of the plaintiff, nor did the plaintiff nor any officer, employee or agent commit any act or engage in any conduct, with the intent to deceive any defendant or defendant's predecessor in interest; that there was no culpable negligence on the part of the plaintiff or any officer, employee or agent of the plaintiff which would constitute fraud toward any defendant or defendant's predecessor in interest.

XIX.

That this action was commenced by plaintiff in a timely fashion and without discrimination as to any person or party.

XX.

That defendant John Halperin had constructive and timely notice of the public recreational uses of that real property described in Finding of Fact Number III by members of the general public prior to April 5, 1964, the date on which the said defendant guaranteed a loan made by United California Bank to Sovereign Development Company, the then fee

owner of the aforesaid property under which the said defendant became beneficiary under a deed of trust dated April 13, 1964.

XXI.

That defendants J. Halperin & Co. of California, Inc. and John Halperin had constructive and timely notice of the public recreational uses of Parcel T by members of the general public prior to August 12, 1970, the date on which the said defendants became beneficiaries under a deed of trust on Parcel T.

XXII.

That defendant Fidelity Savings and Loan Association had constructive and timely notice of the public recreational uses of Parcel T prior to August 12, 1970, and its predecessor in interest, Jefferson Savings and Loan, had constructive and timely notice of the public recreational uses of Parcel T prior to December 18, 1967, the dates on which said defendant and its predecessor in interest became beneficiaries under deeds of trust on Parcel T.

XXIII.

That defendants Oscar Berk and Shirley Berk have applied to the City of Torrance for a building permit and threaten to construct on Parcel T a structure or structures which will permanently deprive members of the general public of beach and shoreline recreational uses of said parcel, and that there is no adequate remedy at law to protect plaintiffs and individual members of the public from deprivation of such use.

XXIV.

That there was no false claim of interest or disparagement of title by the plaintiff or any officer, employee, or agent of the plaintiff.

XXV.

That a clubhouse substantially covered Parcels T and 8 from 1928 to September 25, 1958, on which date it was destroyed by fire. The public use of the clubhouse site for the various diverse beach and shoreline recreational uses as described in Finding of Fact No. XI, commenced by November 1, 1958, at which time the clubhouse had been sufficiently demolished or removed so as not to thereafter constitute an interference with the public recreational uses of the clubhouse site.

XXVI.

That during a period commencing shortly after November 1, 1963, to May, 1965, the then owners of the property described in Finding of Fact No. III maintained a small office on a small portion of one side of the said property, but the office and the business conducted thereon did not significantly interfere with the uses of the aforesaid property by the members of the general public as set forth in Finding of Fact No. XI during the period the office was located thereon; although there were a few business invitee visitors to the property during such period, the members of the general public continued using the property for beach and shoreline recreational purposes; and there was no interference at all with such recreational uses except as to the small office site itself during such period of less than two years.

CONCLUSIONS OF LAW.

I.

That the City of Torrance under law is vested with the responsibility to preserve and protect property lying within the territorial boundaries of said City, which property has

been dedicated to the use and benefit of the public for beach and shoreline recreational purposes and uses incidental thereto.

II.

That there was an implied dedication of property rights for beach and shoreline recreational uses to the plaintiff City of Torrance for itself and on behalf of the public and as Trustee for the People of the State of California of that parcel of real property set forth in Finding of Fact Number III during the period commencing on a date subsequent to September 25, 1958, but no later than November 1, 1958, and ending on or by November 1, 1963.

III.

That the plaintiff City of Torrance, for itself and on behalf of the public and as Trustee in trust for the people of the State of California, has a public easement in, on, over, and across Parcel T for public recreational purposes and uses incidental thereto including but not limited to ingress, egress, general viewing, strolling, picnicking, public protection and policing, erosion control and maintenance and cleaning, but not including the right of the City or the public to build any permanent structures thereon.

IV.

That the defendants Oscar Berk and Shirley Berk are not bona fide purchasers, without notice.

V.

The defendant Fidelity Savings and Loan is not a bona fide encumbrancer without notice and that its security right, title and interest is inferior and subject to public easement for beach and shoreline recreational purposes as to Parcel T.

VI.

That the defendant J. Halperin Company and John Halperin are not bona fide encumbrancers without notice and that their security right, title and interest is inferior to and subject to the public easement for beach and shoreline recreational purposes as to Parcel T.

VII.

That no provision of the Constitution of the United States or of the State of California has been violated by plaintiffs or any of them in this section.

VIII.

That the plaintiff did not slander any title of Oscar Berk and Shirley Berk.

IX.

That plaintiffs have not committed laches and are not estopped to assert their title and have not discriminated against defendants or any of them.

X.

That plaintiff is entitled to a permanent injunction against defendants, and each of them, and their agents, servants, and employees, and all persons acting under, in concert with, or for them, enjoining said defendants, and each of them, and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from constructing, building, or improving on, under or over, altering the surface or the sub-surface of, or any act, or conduct that interferes with or obstructs the full and entire use, possession and enjoyment of the easement of the plaintiff City of Torrance, for itself and on behalf of the public, and as Trustee in trust for the People of the State of California, and the public, and by said plaintiff and the public

in, on, over and across the property described in Finding of Fact Number VII, for public recreational purposes and uses incidental thereto, including but not limited to, ingress, egress, general viewing, strolling, public protection and policing, erosion control and maintenance and cleaning.

Let judgment be entered accordingly.

DATED: Feb. 23, 1973.

/s/ R. S. Schauer
Judge of the Superior Court